IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 2ND NOVEMBER, 2007 / 11TH KARTHIKA, 1929

FAO.No. 46 of 2006
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(AGAINST THE ORDER DATED 03/09/2005 IN IA 283/04 IN OS.83/2002 of SUBORDINATE JUDGE'S COURT,ATTINGAL)

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APPELLANTS/PETITIONER/PLAINTIFF:
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1. DEVI, ANAKKODE DEVI TEMPLE (DIETY)
   MELTHONNAKKAL VILLAGE.

2. MATHEVAN THANKAPPAN, NIRMALA BHAVAN,
   POTHENCODE DESOM, AYIROOPPARA VILLAGE,
   PRESIDENT, ANAKKODE DEVI TEMPLE.

BY ADV. SRI.M.DINESH
SRI.BASANT BALAJI

RESPONDENTS/COUNTER PETITIONERS/DEFENDANTS:
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1. GOPINATHAN, VILAYIL VEEDU, KALIYIKKAL
   THACHAPPALLI MURI, KEEZHUTHONNAKKAL VILLAGE.

2. N.ANIL, KAVUVILA VEEDU, T.B.JUNCTION,
   AVANAVANCHERRY VILLAGE, CHITTATTUKARA DESOM,
   ATTINGAL.

3. PARVATHI THANKAMANY, PUTHUVAL PUTHEN
   VEEDU, KALLOOR MURI, METHONNAKKAL VILLAGE.

4. K.KRISHNAN, PANTHADIVILA VEEDU,
   PULIVETTUMURI, KEEZHTHONNAKKAL VILLAGE.

5. KANCHANA, VALIYA VEEDU, ANAKKOTTU,
   MELTHONNAKKAL VILLAGE.

6. G.SHIBU, VALIYAVEEDU, ANAKKOTTY,
   MELTHONNAKKAL VILLAGE.

7. SHIJISAMBATH, VALIYA VEEDU,
   MELTHONNAKKAL VILLAGE.

8. G.SHEEJA KUMARY,
VALIYAVEEDU,ANAKKOTTY,
MELTHONNAKKAL VILLAGE.

9. VISHNU (MINOR),
S/O.ANI,
VALIYAVEEDU, ANAKKOOTTU,
MELTHONNAKKAL VILLAGE.

R7 TO R9 BY ADV. SRI.R.S.KALKURA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R.RAMAN & V.K.MOHANAN, JJ.**

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**F.A.O.No. 46 of 2006**

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**Dated this the 2nd day of November, 2007**

**J U D G M E N T**

**Raman,J:**

This is an appeal filed against an order dismissing a petition for restoration of the suit filed under Order IX Rule 9 of the Code of Civil Procedure. The suit was filed seeking to set aside the sale deeds. The suit was dismissed for non-appearance of the second plaintiff. The first plaintiff in the suit is the deity who is the first appellant and is represented by the second appellant and the second plaintiff is the second appellant. The ground urged in the restoration application was that second appellant was laid up, but no medical evidence was produced in support of his contention to prove the same. On the other hand, there is evidence in this case to show that the second plaintiff had ceased to be the President of the Committee by his voluntary resignation and the Vice President of the Committee seems to have sought to implead himself. That itself shows that the present

appellants have ceased to have any interest in the matter.

2. In the above circumstances, the second appellant should have produced sufficient materials to show that he continued to have the interest to prosecute the suit and his non-appearance is not due to such lack of indulgence on his part, but due to reasons beyond his control. In the absence of materials produced to support his contention as aforesaid, we do not find any error of law of in dismissing the application for restoration. Hence, there is no merit in the appeal and accordingly, the same is dismissed.

**P.R.RAMAN,**
**Judge**

**V.K.MOHANAN,**
**Judge**

Mbs/

**V.K.MOHANAN, J.**

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O.P.NO. OF 2001

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J U D G M E N T

DATED: -0-2007